IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4151 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE D.H.WAGHELA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SPAN BUILDERS

Versus

GUJARAT INDUSTRIAL DEVELOPMENTCORPORATION

Appearance:

1. First Appeal No. 4151 of 2001

MR KG SUKHWANI for appellant

MR MB GANDHI & MRS TRUSHA M GANDHI for Respondent

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 26/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

Learned Counsel Mr.Sukhwani appearing for the appellant has submitted that he has restricted his claim to Rs.37,500/- only and not the entire claim amount.

2. Admit. Learned Counsel Mr.M.B.Gandhi waives service of notice of admission on behalf of the respondent. With the consent of the parties, the appeal is finally heard and disposed of today.

3. The appellant is a Partnership Firm, who filed suit being Civil Suit No. 4964 of 1996 in the City Civil Court, Ahmedabad for recovery of Rs.5,06,500/-. The trial Court dismissed the said suit by its judgment and order dated 12.2.2001. Hence, the present appeal has been filed by the appellant.

4. The appellant was awarded the contract for construction of 10L and 7C1B type Sheds at Sarigam, District Valsad by acceptance letter dated 18.8.1987 issued by the Executive Engineer of the respondent Corporation. There is no dispute to the fact that the appellant paid the security deposit and signed the contract agreement on 1.9.1987, Exh.43. The work order was issued after three months on 11.11.1987, Exh.44. The work was required to be completed within the stipulated period of nine months and was to be completed on or before 10.8.1988. It appears that the completion of the work was delayed and ultimately the work could not be completed within the stipulated period. The extension was granted upto 10.11.1988 without any penalty but the penalty was imposed from 11.11.1988 to 10.12.1988 by letter dated 8.2.1989, Exh.25. It is the case of the appellant in the suit that Rs.37,500/- was deducted wrongly, arbitrarily and illegally from R.A. Bills towards alleged penalty and loss of Rs.4,69,000/- was suffered due to delay in completion of the work. The appellant, therefore, filed the suit for recovery of Rs.5,06,500/- together with interest at the rate of 18% per annum from the date of notice till realisation.

5. The respondent resisted the suit by filing written statement Exh.13 wherein it was, inter alia, contended that the suit of the plaintiff was not true and therefore, the appellant has no right to file such suit against it.

6. Learned Counsel appearing for the appellant fairly conceded before us that the appellant will not

raise the claim to recover the entire claim amount and will restrict the claim only to recover Rs.37,500/- from the respondent from the R.A. Bills for alleged penalty. Therefore, the only question which is required to be considered in the present appeal is as to whether the respondent was legally entitled to recover Rs.37,500/from the R.A. Bills for the alleged penalty. Learned Counsel Mr.M.B. Gandhi, appearing for the respondent submitted that regarding extension of time limit, the decision of the Superintending Engineer is final and since the appellant accepted the order passed by the Superintending Engineer, it is not open for the appellant now to challenge the said order.

7. Having gone through the evidence on record, it is clear that the delay has occurred in completion of the contract work. It is not in dispute that as per the terms and conditions of the contract, the respondent is authorised to recover damages from the contractor and once the time was extended, the appellant was bound to complete the contract work as the time was the essence of the contract. It is true that the appellant accepted the order passed by the Superintending Engineer who extended the time, without any protest. However, it is necessary to consider certain difficulties which came up in the way of the appellant, due to which, the appellant could not carry out the work in time. It is the grievance of the appellant that the land was not made available and that there was problem of grass-cutting which was not included in the Tender. It is also the grievance of the appellant that there was delay in issuance of work order. Besides, there was unseasonal rain for 20 days and because of the same, the production and supply of bricks was closed. There is no doubt that because of the aforesaid problems faced by the appellant, the respondent had extended the time limit, within which, the appellant was required to complete the work. Assuming that there was a delay in completion of the work, unless and until the respondent proves that the delay in carrying out or completing the contract work resulted in legal injury or actual loss or damage, the respondent would not have deducted Rs.37,500/- from R.A.Bills of the appellant. Needless to say that, in the instant case, the respondent has failed to point out the actual loss or damage caused to it because of the delay in completion of the work by the appellant. In this view of the matter, in our opinion, the appellant is entitled to get refund of Rs.37,500/being security deposit, from the R.A. Bills. The appeal is, therefore, required to be allowed for that limited purpose only.

8. In the result, the appeal is partly allowed. The judgment and order dated 12.4.2001 passed by the learned Judge, City Civil Court, Ahmedabad, in Civil Suit No. 4964 of 1990 is set aside. The respondent is directed to refund the amount of Rs.37,500/- (Rupees Thirty-seven thousand and five hundred only) to the appellant. There shall be no order as to costs.

(Kshitij R. Vyas, J.)

(D.H. Waghela, J.)
Sreeram.